

# **EXHIBIT 10**

09/04/2018

STERN, JULIA A.

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IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

GREEN BAY DIVISION

EQUAL EMPLOYMENT OPPORTUNITY )  
COMMISSION, )  
                                )  
                                )  
Plaintiff, )  
                               )  
                               )  
vs.                         ) Civil Action No: 2:17-cv-70  
                               )  
WAL-MART STORES EAST, LP, )  
                               )  
                               )  
Defendant. )  
                               )  
                               )

Deposition of

JULIA A. STERN

Tuesday, September 4, 2018

9:07 a.m.

at

U.S. Equal Employment Opportunity Commission

310 West Wisconsin Avenue

Milwaukee, Wisconsin

Reported by Faye M. Talatzko, RPR

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1	A	No.	1	office.
2	Q	Do you know -- Do you have any knowledge of who may have prompted Bonnie Popp to fill out a scheduling availability form for Marlo Spaeth on February 16, 2015?	2	And this was July 10, 2015?
3			3	Yes.
4			4	And who are all the people who were in the management office during this meeting on July 10, 2015?
5			5	Marlo, myself, and Robin Castro.
6	A	No.	6	And what is the title of Robin Castro's position?
7	Q	Did you terminate Marlo Spaeth?	7	She was a shift manager. Co-manager.
8	A	Yes.	8	I'm sorry. Shift manager?
9	Q	And when was that?	9	They interchange. The company goes back and forth between shift manager and co-manager, so it is the same position.
10	A	On July 10th, I believe. 2015.	10	At the time was her title co-manager?
11	Q	I'm sorry?	11	I -- Yes, I guess.
12	A	2015.	12	And in effect, Robin Castro was above you but below the store manager; is that correct? In the chain of command.
13	Q	July 10, 2015. Why did you terminate Marlo Spaeth?	13	Yes.
14	A	Because of her attendance.	14	Did Marlo Spaeth have any advance notice that you would want to meet with her before the actual meeting on July 10, 2015?
15	Q	What was wrong with the attendance of Marlo Spaeth?	15	No.
16	A	She was not working her entire shifts or at all.	16	Is it also true that nobody in the -- none of the family members of Marlo Spaeth had any advance notice of the July 10th, 2015 meeting?
17	Q	When you say "or at all," what do you mean?	17	
18	A	She had a couple of days where she did not come into work at all, nor did she call in.	18	
19			19	
20	Q	And prior to termination, how many coachings did Marlo Spaeth receive?	20	
21			21	
22	A	Two.	22	
23	Q	And are both of those coachings represented in Exhibit 20?	23	
24			24	
25	A	Yes.	25	
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1	Q	Is it your testimony that an employee -- Let me rephrase.	1	True.
2			2	Did the meeting occur during Marlo's scheduled shift?
3			3	Yes.
4			4	And how did Marlo first become aware that you wanted to meet with her?
5			5	I called her into the office.
6	A	She would not have been terminated because she received the coaching.	6	On a telephone?
7			7	No.
8	Q	Did she need two coachings plus additional violations of the attendance policy in order to be eligible for termination?	8	Did you go out --
9			9	Went out and got her, and brought her back to the office.
10			10	Okay. And tell me everything you remember about what was said at that meeting.
11	A	Yes.	11	We told her that we were terminating her employment because of the excessive absence occurrences.
12	Q	And so at the time of March 18, 2015, there was not -- there had not been enough discipline of Marlo Spaeth at that point to make her eligible for termination; is that correct?	12	When you say "we," did you say that or did Robin Castro say that?
13			13	Both Robin and I were talking.
14			14	Did you have any papers that you showed Marlo Spaeth?
15			15	We would have had her attendance tracking.
16			16	Any other papers?
17	A	Do you understand the question?	17	No. Just her attendance tracking.
18	Q	That's why she had the second coaching.	18	Is there anything else you recall about the meeting?
19			19	And that she was upset. She cried.
20	A	On March -- That's why she had the second coaching on March 18, 2015; is that correct?	20	What else do you remember?
21				
22				
23	A	Yes.		
24	Q	Where were you?		
25	A	In the invoice office -- or, in the management		

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1	A	It took a while for her to leave. You know, she just sat in the chair and cried.	1	A	Her sister called that night.
2	Q	What did she say?	2	Q	And would that be her sister Amy Stevenson? Does that sound correct?
3	A	I don't recall.	4	A	Yes.
5	Q	Did she understand the word "terminated," in your opinion?	5	Q	And when you say "that night," around what time do you think it was?
7	A	Well, yeah, we told her that she wasn't going to be working with us anymore, that we were ending her employment. She understood that.	7	A	I don't know. I don't know. I don't remember what -- I don't remember what time it was. It was after Marlo left.
10	Q	Is Marlo Spaeth disabled?	10	Q	"After Marlo left." And was it still your shift? Do you think you were still clocked in?
11		MR. BULIOX: Objection as to the definition of "disabled."	12	A	Yes.
13		But subject to that, go ahead and answer.	13	Q	And did you answer the phone?
14		You know, actually the objection goes a little bit further, to the extent that Ms. Stern is not a medical professional.	14	A	Yes.
17		Subject to those objections, answer, if you can.	15	Q	Okay. What did Ms. Stevenson say to you in this phone call?
19	BY MS. VANCE:		17	A	She called twice. The first time she called and asked if she could speak to someone about getting Marlo's job back.
20	Q	Let me rephrase. Does Marlo Spaeth have a disability?	20		And I told her I would give her the store manager -- give him her phone number, and he would contact her.
22		MR. BULIOX: Same objection.	23	Q	And did you? Or did you have -- I'm sorry. When you said I would give her the phone number, did you in fact give Ms. Stevenson the phone number of the store
23	A	I know she had Down Syndrome, just from working with her.	25		
25	BY MS. VANCE:				
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1	Q	And had you known that she had Down's Syndrome the entire time that you had worked with her?	1		manager?
3	A	Yes.	2	A	No. I told her I would give the store manager her phone number.
4	Q	Did you give Marlo Spaeth any paperwork as part of this termination meeting?	4	Q	I see.
6	A	Yeah, they get like -- For insurance and stuff, they get a copy of all the phone numbers they can call if they have any...	5	A	And he would contact her when he was in.
9	Q	Any what?	6	Q	And did you do that?
10	A	Any insurance or, you know, 401s or any of that kind of stuff, profit sharing. There's different numbers on that piece of paper they can call.	7	A	He wasn't in. I gave him -- I sent him the email, giving him the phone number.
13	Q	Do you remember giving Marlo Spaeth that paperwork?	9	Q	So you sent an email to -- Now, at that time was it Jason or Kent?
14	A	I don't remember. I'm sure we did, because we do for everyone.	10		
16	Q	Do you have any knowledge of whether or not Marlo Spaeth called Wal-Mart after July 10, 2015, to ask about her schedule for work?	11	A	That was Kent.
19	A	No.	12	Q	That was to Kent. You sent Kent an email with Amy Stevenson's phone number on it; is that correct?
20	Q	Do you have any knowledge of whether or not Marlo Spaeth returned to Wal-Mart to work after July 10, 2015?	14	A	Yes.
23	A	No.	15	Q	Do you think it was that day? That very day, July 10, 2015?
24	Q	After the July 10, 2015 meeting, did you have any contact with any family member of Marlo Spaeth?	17	A	I believe so.
25			18	Q	Was there anything else spoken in that first conversation with Amy Jo Stevenson?
			20	A	Not that I recall. She just wanted to talk to someone.
			22	Q	Did Amy Stevenson have any way of knowing that you personally had been in the meeting where Marlo was terminated?
			23		MR. BULIOX: Objection. Calls for
			24		
			25		

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1	A	No.	1	Q	In Exhibit 24, halfway down that first paragraph I'm reading. "Marlo was aware that she was to work her full shifts which are always 1 to 5:30, and Karen would print out her schedules for her."
2	Q	Have you ever had a computer-based learning module that trained you on assisting employees who request a reasonable accommodation, and finding the proper paperwork at Wal-Mart?	2		Is that "Karen" referring to Karen Becker? Is that right?
3			3	A	Yes.
4			4	Q	The last sentence of paragraph 1 says, on June 29th and 30th she was in -- I'm sorry.
5			5		"Robin and I both sat down with Marlo and explained that due to the excessive occurrences between both absences and incomplete shifts we were ending her employment with us and proceeded with the Gain."
6		MR. BULIOX: I'll object. Same objection as before.	6		What is the Gain referred to there?
7			7	A	That's what it is called on the computer, to terminate an associate. You pull it up and then it has all their information and everything that you have to fill out.
8	A	As far as I recall, no. I -- I've had many, many, many CBLs over the years, but not specifically on filling out paperwork.	8	Q	Did Gain stand for something? Is it an acronym?
9			9	A	Not that I know of.
10			10	Q	Do you have any idea why it is called Gain?
11	BY MS. VANCE:		11	A	I don't know.
12	Q	Has an employee ever talked to you as a member of salaried management about needing a reasonable accommodation from Wal-Mart?	12	Q	Is there something special that you as an assistant manager do in order to access Gain?
13			13		
14			14		
15	A	No.	15		
16		MR. BULIOX: Same objection. I'm going to make a standing objection.	16	A	
17			17		
18	BY MS. VANCE:		18		
19	Q	If an employee tomorrow at work or the next time you are at work came to you and said, "I need to request a reasonable accommodation, what should I do," what would be your answer?	19		
20			20		
21			21		
22			22		
23	A	I would refer them to the store manager.	23		
24	Q	And have you ever seen any of the paperwork that an employee would need to fill out to request a	24		
25			25		
		Page 63			Page 65
1		reasonable accommodation?	1	A	You have to go onto the computer and access the Gain app, I guess you would call it. And then you go in and put their name in, and it pulls up all -- you know, their address and everything, and you type in there the reason for the termination.
2	A	No.	2	Q	What else? What other information do you input in the Gain?
3	Q	And so it sounds like you've never participated in the process where an employee under your management purview has received a reasonable accommodation from Wal-Mart.	3	A	You put if they are eligible for rehire, if you would rehire them. Just comments. If they turned in like their vest and their main badge.
4			4	Q	On July 10, 2015, what did you input into the Gain after your meeting with Marlo Spaeth?
5			5	A	I don't recall what I put in. I'm sure I put in because of the occurrences, yeah, that we were terminating her for attendance.
6			6	Q	Do you recall what you marked as far as eligibility to be rehired for Marlo Spaeth on July 10, 2015?
7	A	I don't make the decision on that. That has to be the store manager or someone from the market. It is higher up than me, so I just refer them to the store manager, and then they decide -- or if he has to go higher, depending on what the accommodation is.	7	A	I would most likely have put that she is eligible for rehire.
8			8	Q	Why do you say that that's the most likely thing that you would have done?
9			9	A	Just because the majority of the terminations I've done, they are eligible for rehire. Attendance is one thing that is something that a person can fix. You know, it is not something terrible, that they
10			10		
11			11		
12	Q	If somebody who is under your management purview has a reasonable accommodation in place, how are you -- or, are you made aware of the accommodation somehow?	12		
13			13		
14			14		
15			15		
16	A	Yes.	16	Q	
17	Q	How?	17	A	
18	A	Yes. Either Kent would tell us or Karen would have that. She would let us know, because they would have to put it in their file. And she would let us know, you know, that this person needs to sit down every so often or whatever.	18	Q	
19			19	A	
20			20	Q	
21			21	A	
22			22	Q	
23	Q	And is that information conveyed to you in writing or in a spoken conversation?	23	A	
24			24		
25	A	In a spoken conversation.	25		

		Page 74			Page 76
1	Q	Is there any minimum at Wal-Mart required? Any minimum requirement for how many associates ought to be in a department at any time?	1	A	applications in any way when you are reviewing them? No. They all pop up in the screen together. The rehires fill out an application just like everyone else does. The only difference is on theirs it says "have you ever worked for Wal-Mart before" and they put the dates that they worked there.
2	A	No.	2	Q	Is there anything about the system -- Let me back up on that. The date range that they worked at Wal-Mart is what they would put on the application?
3	Q	And in that first half of 2015, was the department manager position for domestics a full-time position?	3	A	Yes.
4	A	All department manager positions are full-time.	4	Q	Okay. As opposed to the days of the week. They are actually telling you the time frame?
5	Q	And are they -- Are department managers always covering day shift?	5	A	Right. Like I worked there in 2010 to April or June or something.
6	A	Yes, mostly, unless they choose to come in to work with an associate on the weekend or overnight. Or on the evening shift.	6	Q	Does the system flag somebody who has worked at Wal-Mart versus an applicant who has never worked at Wal-Mart --
7	Q	In that first half of 2015, did the domestics department have more than one department manager?	7	A	No, no.
8	A	That I don't recall, because it went from -- at one point there were three between all of them and then it went to two. So...	8	Q	-- in any way?
9	Q	Do you recall whether there were two at the first half of 2015?	9	A	How long do you think it would take -- I'm sorry.
10	A	There would have been at least one for domestics and one for housewares.	10	Q	How long do you estimate it would take to fill out an application in 2015?
11	Q	And can a department manager from housewares cover the domestics department if the department manager from domestics is not working?	11	A	Maybe a half hour to an hour. It is done on a computer so, you know, however proficient you are on
12	A	Yes.	12		
		Page 75			Page 77
1	Q	And what's the name of the department that Marlo Spaeth worked in?	1	A	a computer.
2	A	It was -- Well, she was mostly in domestics and housewares.	2	Q	Can it be done from any computer with an internet connection or does it have to be done at Wal-Mart?
3	Q	And I think your testimony is that you thought there was probably one more associate. Do you know whether the other associate would have been full-time or part-time?	3	A	No, it can be done from anywhere.
4	A	Part-time.	4	Q	(Exhibit 25 marked for identification.)
5	Q	In 2014 did you have any role in scheduling?	5	A	All right. I am handing you what's been marked as Exhibit 25. Ms. Stern, what is this document?
6	A	Yes.	6	Q	A series of emails that I sent about Marlo's attendance.
7	Q	Did you have any role in receiving applications for employment?	7	A	Now I'll direct your attention to the second page. So this email titled "Marlo" you sent on January 13, 2015, to Robin Castro, Bonnie Popp, and Jason Radue; is that correct?
8	A	Yes.	8	Q	Is there anyone else besides those three people who are above you in your chain of command --
9	Q	And what is your role in the application for employment process?	9	A	No.
10	A	If we have a position open, then I would review the applicants and choose ones that I would like to interview.	10	Q	-- in the store?
11	Q	And in that capacity, do you also review candidates who are trying to get rehired by Wal-Mart?	11	A	I suppose there's probably a Walton higher up your chain of command.
12	A	Yes. They would have to fill out an application just like anyone else.	12	Q	But in the store it is those three people, correct?
13	Q	If you are reviewing applications, do you separate rehire applications from first-time employment	13	A	Yes.
14			14	Q	And then in the email you go on to relay some information from the meeting that would have been

		Page 78		Page 80
1	three weeks ago. Is that right?		1 A It could have been.	
2 A	Yes.		2 Q So now I'm asking you why couldn't Marlo just work noon to 4 like she used to?	
3 Q	Okay. And you say you did a coaching for attendance.		4 A Because the system generated the schedule according to the traffic of the customers, and it generated shifts from 1 to 5:30, so that was the shift that was available for her. That was the shift she was available for; that's why she got those shifts.	
4	Just to make sure all the documents are		5 There was no 12-to-4 shift generated anymore.	
5	lining up -- That's Exhibit 20, correct?		6	
6 A	Yes.		7	
7 Q	And let's see. In the middle I see that it says,		8	
8	"She wanted to know why she can't just work noon to		9	
9	4, like she used to."		10 Q When did the system -- When you say "anymore," when	
10	Do you see where I'm reading?		11	
11 A	Yes.		12	
12 Q	What do you recall Marlo saying that prompted you to write that?		13	
13			14 A Like right around -- Before like Thanksgiving'ish, I guess.	
14 A	That she just wished she could work noon to 4, like she used to.		15 Q Of November of 2014?	
15			16 A Yeah. Because it goes according to the customers coming into the store. So, you know, a bit with the holiday season and getting busier, it generates different shifts. It doesn't always generate the same shift, other than a department manager.	
16 Q	And when did Marlo say that to you?		17 Q I don't understand what you mean when you say, "it doesn't always generate the same shift, other than a department manager."	
17 A	Whenever I would talk to her about her attendance.		18 A Department managers always work the same shift from	
18 Q	How often was that in this December 2014 to January 2015 time frame?		19	
19			20	
20 A	I'm not sure how many times. I mean we documented the coaching and when we talked to her on December 17th.		21	
21			22 Q	
22			23	
23 Q	So is it fair to say that more than three times Marlo said something to the effect of wanting to know why she just -- or, can't just work noon to 4, like		24	
24			25 A	
25				
		Page 79		Page 81
1	she used to?		1	day to day. The rest of the sales force, the associates and the cashiers and everyone else in the store, it goes according to the customer traffic.
2 A	Possibly, yes.		2	
3 Q	Do you think it would be more than three times that she would have expressed a sentiment like that to you?		3	
4			4	
5			5	
6 A	I don't remember. I don't know how many times. I know it was whenever I talked to her about attendance.		6	
7			7	
8			8	
9 Q	And it sounds like you had documented a personal discussion. Right?		9	
10			10	
11 A	Um-hum.		11 Q	
12 Q	From December 17, 2014, right, on Exhibit 21? Is that right?		12	
13			13	
14 A	Right.		14	
15 Q	You think during that personal discussion she asked you a question to the effect of: Why can't I just work noon to 4, like I used to?		15 A	
16			16	
17			17	
18 A	She may have.		18	
19 Q	It sounds like it was something that she asked you -- Well, I think you said three times. Do you think it probably was more than three times?		19	
20			20	
21			21	
22 A	I don't know.		22 Q	
23 Q	But it sounds like it wasn't less than three times. Maybe it was at least three separate occasions where she asked you this?		23	
24			24	
25			25 A	

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1 Q	-- because of customer traffic. Is that right?		1 A	It could.	
2 A	Correct.		2 Q	And to your knowledge, how long has scheduling been based in part on an analysis of customer traffic?	
3 Q	What about November 2013, like the holiday, the rush before then?		4 A	The entire time that I have been there. It has always been computer-based scheduling.	
5 A	I don't know. I wouldn't know.		6 Q	And that's since 1990 without interruption; is that correct?	
6 Q	This periodic change or update in the scheduling system, did it happen before 2014 or was 2014 the first time that you saw a change in what shifts you could schedule?		8 A	Yes.	
10 A	Like I said, I was on nights for part of 2014. So, you know, the shifts change all the time and then it fills in whoever is available during those hours. That's who gets assigned the shifts.		9 Q	I'll direct your attention back to Exhibit 25. And, oh, about six lines down I read, "Karen and I also checked her file and availability. She has nothing on file restricting work hours and is available until 6 p.m."	
14 Q	Was that true in 2013, the way it was in 2014?		14	So I'm going to ask, that "Karen" that you are referring to is Karen Becker, correct?	
15 A	I would think so, yes.		15	16 A	Yes.
16 Q	So you've been at Wal-Mart since 1990. Was the scheduling system this way, where there's periodic changes according to customer flow, ever since 1990?		17 Q	And so when you write that, it was that you and Karen went together to check Marlo's file; is that right?	
19 A	Yes, it is always changing.		19 A	Yes, she pulled the file, and we looked at it together to see if she had any medical restrictions on time for her to eat.	
20 Q	And in your past experience scheduling days as an assistant manager, have you ever seen other seasons or other times when the system would no longer generate a noon-to-4 schedule?		22 Q	And what did you find?	
24 A	I can't answer that, because I don't know how many noon-to-4 schedules it would have generated. It		23 A	There was nothing in there.	
25			24 Q	Okay. And then did you find her scheduling availability form?	
Page 83			Page 85		
1	could have four cashiers, too. I don't know.		1 A	That's on the computer.	
2	The only schedule I would look at was the area I was over. And it was put in those -- whatever shifts were available, and then assign whoever is available to those shifts.		2 Q	So her scheduling availability form --	
6 Q	Any reason to believe that November of 2014 would have been the first time since 1990 that the system would not have been able to generate a noon-to-4 schedule for Marlo Spaeth?		3 A	I wouldn't have looked at the form in there, because we go off of what's on the computer. So whatever was in there was what -- the shifts that she would be available for. So she was available from noon until 6, in the computer system.	
10 A	If that was the time that the customer traffic dictated someone to be there, it would have generated the shift for that time. It wouldn't just generate a specific shift for Marlo or anyone else.		8 Q	In the computer. So when you say "I checked in there," you mean in the computer system?	
14 Q	And then do you -- But it sounds like you don't have any specific knowledge of any day-shift employees who worked a noon-to-4 day shift when you were in charge of day shifts, before this 2014 situation.		10 A	Yes.	
18 A	No, no.		11 Q	Okay. And this document, Exhibit 22, that was physically signed, the actual paper with the signature is in the personnel file, correct?	
19 Q	Okay. "No" is the answer?		14 A	Yes.	
20 A	No.		15 Q	Okay. And so when you were looking with Karen in Marlo's personnel file, are you testifying that you did not see the scheduling availability form that is marked as Exhibit 22?	
21 Q	Okay. Can you predict? Is there like a set time frame when the scheduling system changes what shifts are available?		19 A	I didn't look for those at all. We just looked to see if she had anything in the medical part that said she needed to eat at a certain time.	
24 A	No. It changes it all the time.		22 Q	Okay. So this paper -- The piece of paper existed in the file you were looking at, correct?	
25 Q	It could change it from week to week?		24 A	Correct.	
			25 Q	And it is not where you were looking, it sounds like.	

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1	someone's schedule when there is a business need.		1	Q	And I would ask you, do you think you've ever had a computer-based learning course on reasonable accommodations that would have mentioned a modified schedule as a possible accommodation?
2	Like you gave the example of Black Friday. What do		2	A	No, I don't think so.
3	you do as a manager to change the time somebody is		3	Q	And I'm trying to remember your testimony from this morning. I'm just blanking. Do you have a memory of taking a computer-based learning course at Wal-Mart that addressed reasonable accommodations in employment?
4	scheduled?		4	A	I had taken a lot of CBLs over the years, and I'm sure somewhere along the line there was something about it, but...
5	A That's where we talk to each associate to see who		5	Q	It sounds like you don't have a specific memory. But you know that you've probably had more than 100 CBLs in the last decade, correct?
6	could come in during the sale time that we needed,		6	A	Probably.
7	and then we could go in and adjust the shift times		7	Q	Can you estimate for me how many computer-based learning courses you take over the year as an assistant manager?
8	for that sale period.		8	A	It varies from year to year. It depends. If we have to update our food licenses, there's more than normal. So it varies every year.
9	Q And physically what do you do to adjust the time for		9	Q	Since you have become a member of salaried management, do you think you have taken more than
10	the period?		10	A	
11	A You highlight that shift and then you would hit		11	Q	
12	whichever F key it was to adjust the time frame.		12	A	
13	Q So does it take like three keys to change --		13	Q	
14	A I don't know.		14	A	
15	Q -- from 12 to 11?		15	Q	
16	A Maybe.		16	A	
17	Q And then if you wanted to change a 5:30 end time to		17	Q	
18	4, you would have to hit one of the F -- like one of		18	A	
19	the function keys and then --		19	Q	
20	A Change the time.		20	A	
21	Q -- type in the new time. So maybe four key strokes.		21	Q	
22	And the schedules show up a week at a		22	A	
23	time, correct?		23	Q	
24	A Yes.		24	A	
25	Q Okay. How long do you think it would have taken you		25	Q	
		Page 99			Page 101
1	to change Marlo Spaeth's schedule to shifts that were		1	Q	200 CBLs?
2	12:30 to 4, if you wanted to?		2	A	I couldn't tell you how many. I honestly couldn't.
3	MR. BULIOX: Objection. It misstates the		3	Q	But would you agree with me that it is more than 100?
4	testimony and mischaracterizes what was just		4	A	Most likely, yes.
5	testified to about business needs, as a personal		5	Q	Have you ever seen the list of your trainings? Is there one maintained in your personnel file?
6	want.		6	A	There would be on the CBL computer, of what we did on there. Before that we had microfiche, so there's no list of that.
7	Subject to that, go ahead and answer the		7	Q	When did you switch from microfiche to the computer tracked system?
8	question.		8	A	Yeah.
9	BY MS. VANCE:		9	Q	Do you know when you switched away from microfiche?
10	Q Let me restate the question. If you were directed by		10	A	No, it was -- No. It was in the beginning of my salaried career, somewhere around there.
11	somebody up your chain of command to change Marlo's		11	Q	Last millennium?
12	schedule to make sure that she worked a schedule that		12	A	Yeah.
13	reflects only the availability in Exhibit 22, how		13	Q	Or, no. It would be maybe after 2000, if it was the beginning of your salaried management career. Like 2002. Okay.
14	long would that have taken you in November of 2014?		14	A	Do you know whether a list of your CBL trainings is maintained in your paper personnel file?
15	A That would have only taken a couple of minutes.		15	Q	That I don't know. My file is at the home office; it is not in the store. So I don't know what they all have in there.
16	Q For the week?		16	A	
17	A Yes.		17	Q	
18	Q And in your experience since you became a member of		18	A	
19	salaried management, have you ever managed an		19	Q	
20	employee of Wal-Mart who had a reasonable		20	A	
21	accommodation on their schedule?		21	Q	
22	A No.		22	A	
23	MR. BULIOX: Again, my objection to		23	Q	
24	"reasonable accommodation" from earlier stands.		24	A	
25	BY MS. VANCE:		25	Q	

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1	A	No.	1	A	No, no.
2	Q	And I bet a co-manager could. Is that right?	2	Q	Okay. So then let's look on our second page. I'm
3	A	Yes.	3		looking at March -- the top entry, March 12, 2007.
4	Q	When I look at that code key on the last page, I also	4		It looks like the associate left early, at 3:49, and
5		see authorized incomplete shift non-FMLA as 58.	5		it was coded as a 63. Is that right?
6	A	Yeah. I think one is for coming in late and the	6	A	Yes.
7		other one is for leaving early.	7	Q	So that would be an example where the associate is
8	Q	Okay. And then I see 56 is authorized absence	8		not working their complete shift -- or, I guess, in
9		non-FMLA. What is the difference between authorized	9		this case Marlo Spaeth didn't work her complete
10		absence and authorized incomplete shift?	10		shift, but her manager made sure it was in the system
11	A	Because an absence would be their entire shift, and	11		coded as authorized. Correct?
12		an incomplete would be that they were there part of	12	A	I am guessing so, yes.
13		their shift.	13	Q	And how -- At what point in time do these things get
14	Q	And what is a 51? Incomplete shift occur?	14		coded?
15	A	I think that's for more than 50 percent of their	15	A	Usually, within a couple of days. I mean if the
16		shift. So it counts as an entire -- like an absence	16		manager is off, it will get coded the next time they
17		for the whole day.	17		work.
18	Q	All right. And those double asterisks, is that if a	18		MR. BULIOX: Just as a standing objection
19		market human resources manager approves an incomplete	19		to form and to the extent it calls for speculation,
20		shift?	20		as it concerns actions that weren't taken by
21	A	Yes.	21		Ms. Stern or that Ms. Stern was otherwise involved
22	Q	So that would have been Lee Spude authorizing an	22		in.
23		incomplete shift; is that correct?	23		Subject to that, you can go ahead and
24	A	Yes.	24		answer the questions, if you can.
25	Q	Okay. And then I see 54 is a business need	25		BY MS. VANCE:
		Page 119		Page 121	
1		incomplete shift. What does that mean?	1	Q	So as part of your job as the assistant manager, are
2	A	That's like, say, you have a department manager that	2		you entering codes like this pretty much every day
3		gets sick and then someone else comes in to fill in	3		for the employees under your management purview?
4		for them.	4	A	Yes. When we are on the system, yes.
5		Or a business need is like if someone had	5	Q	And what system do you go into to do that?
6		to go to the academy. They are going to show up as	6	A	This was in the Smart System.
7		not being at the store for their shift. So that	7	Q	And is there any kind of list that the Smart System
8		would be a business need there. They are actually on	8		generates of, hey, these are all the employees who
9		the clock getting paid for their time, but they are	9		needed codes for their time?
10		at another store working, or academy school or	10	A	They would all show up, and you go in and do the ones
11		whatever it is that they are doing.	11		that were under you.
12	Q	All right. If an associate has completed most of the	12	Q	And how often does that happen?
13		work in their department and there's not really any	13		MR. BULIOX: Objection as to time.
14		customers around, and the manager thinks why don't I	14	A	It would be on a daily basis. You know, you have so
15		just send this person home -- First of all, can a	15		many people under you each day. You know, there's
16		Wal-Mart manager do that?	16		always somebody calling in or coming in late or
17	A	Yes.	17		leaving early. You know, it is a constant thing, so
18	Q	And then how is that decision coded?	18		every time that you work you go in and code all your
19	A	That would be an approved incomplete shift.	19		absences.
20	Q	What would be the code?	20		BY MS. VANCE:
21	A	I haven't done these codes in a long time. That	21	Q	Okay. I'm turning to our third page. I'm going to
22		would be like a 62 -- or, a 63.	22		count and see if you get the same count. I'm going
23	Q	All right. But if you sent somebody home early	23		to count 63s. 11. I count 11 authorized incomplete
24		because the shop is -- the store is really slow,	24		shifts non-FMLA on page 3. Do you agree with me?
25		that's not called business need, early departure?	25	A	That's what I count.

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1	the Smart System and coded the associate left early, exception as authorized. Correct?	1	at that time, right?
2		2	A Yes.
3	A Yes.	3	Q And when do you think you stopped using this system?
4	Q And in some cases the manager making that 63 authorization on this page would have been you at some point, correct?	4	A I don't know. A couple of years ago.
5		5	Q Okay. In November -- So on this page that covers November 2014 through February 2015, this is when you
6		6	have a memory of being the assistant manager managing Marlo Spaeth, correct?
7	A I don't remember when I came to days. I don't know what month it was.	7	A Yes.
8		8	Q And does that mean that these codes all came from you --
9	Q Can you remind me for code 60, incomplete shift occur, what -- what that means and how it is different than 51?	9	A Yes.
10		10	Q -- on this page?
11		11	Okay. Is it possible that anybody else gave those codes?
12	A I don't know.	12	A If I was off for some reason. I would say no, because we aren't off any of those -- during those months.
13	Q Because 51 looks like it stands for incomplete shift occur, correct?	13	Q Sorry. That's funny. Do you remember what -- So let's take this one at a time. So business need incomplete shift is the designation for the first 11 early departures of Marlo on this page, right?
14		14	A Yes.
15	A That's what it looks like.	15	Q Do you remember what the business need incomplete shift was that prompted you to enter 61?
16	Q But 60 also is called incomplete shift occur. They are both 50 and 61. You wouldn't code that unless there was an unauthorized --	16	
17		17	
18		18	
19	A I think the 51 was coming in late and 60 is leaving early.	19	
20		20	
21	Q I see. Okay. And for both situations there, unauthorized by management; is that correct?	21	
22		22	
23	A Yes.	23	
24	Q 51 and 60?	24	
25	A Yes.	25	
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1	Q And for both the code 51 and the code 60, the associate is credited with an absence as far as their attendance record; is that correct?	1	A That was when we were adjusting to the new scheduling system.
2		2	Q And so what was the business need?
3		3	A So for them -- We put it in as a business need when we were helping them adjust to the new scheduling system.
4	A For every three.	4	Q And when you say "them," who do you mean?
5	Q For every three?	5	A All of the associates.
6	A Every three incomplete shifts counts as one absence.	6	Q "All of the associates." Okay. So was there some kind of instruction to you that for a certain period of time you would code early departures as 61, business need incomplete shift?
7	Q And was there some difference between whether an associate leaving early was more than 50 percent of their scheduled time or not?	7	A I'm sure there was.
8		8	Q And where would that have come from?
9		9	A Most likely from Lee.
10	A More than 50 percent counts as an entire absence.	10	Q From your market human resources manager?
11	Q And so how would that -- If it was unauthorized, how would that be coded?	11	A Yeah.
12		12	Q Okay. Do you remember if there was a time frame given to you in the instruction?
13	A I don't know.	13	A I don't remember.
14	Q Because I thought you had testified previously that you would use 51 under the absence occurred title if the associate was gone more than 50 percent of their shift, and it would be credited as an absence. Is that not right?	14	Q Let's see. The last one is December 3rd, 2014?
15		15	A Right.
16		16	Q Yes. Let's see. We see our first scheduling until 5:30 on November 24. So it looks like -- Strike that.
17		17	
18		18	
19	A I -- I don't know. It has been a long time since we did these.	19	
20		20	
21	Q And you printed this out on March 18, 2015. You weren't printing out an old document. You were printing out a current document, correct?	21	
22		22	
23		23	
24	A Yes.	24	
25	Q Like that was -- This is the system that was in place	25	

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1	It looks like starting December 8, 2014,	1	A Um-hum.
2	you switched to coding Marlo's early departures,	2	Q Am I right that Marlo was scheduled to work from noon
3	instead of with the business need designation, with	3	to 4 p.m. on February 13, 2015?
4	the incomplete shift occurrence designation of 60.	4	A Yes.
5	Is that correct?	5	Q And it looks like she clocked out 12 minutes early;
6	A Yes.	6	is that correct?
7	Q So then let's go back to that piece. Did you have a	7	A Yes.
8	conversation with Marlo Spaeth about how you were	8	Q And you marked her as incomplete shift occur, with a
9	coding her early departures in that time frame of	9	60, right?
10	early December 2014?	10	A Yes.
11	A Not that I recall, until this -- the 17th.	11	Q How was Marlo scheduled 12 noon to 4 on February 13,
12	Q So you can't -- I want to see if you remember. If	12	2015?
13	you code her as a 60, your testimony is that the 60s	13	A The system probably generated a schedule for her for
14	that started in that December 8, 2014 time frame were	14	that shift.
15	not counted as absences. It would have been three	15	Q To your understanding, why would it have scheduled a
16	60s to count as one absence; is that correct?	16	12-to-4 shift for her on one day, when on other dates
17	A Yes.	17	she had 2 p.m. to 5? Is that right? 1 p.m.?
18	Q And this chart would not show at any time Marlo	18	A 1 p.m. to 5:30.
19	Spaeth worked an entire shift; is that correct?	19	Q To 5:30 shift.
20	A Right.	20	A I don't know. I could speculate that it is the day
21	Q Did you ever have any conversation with a former	21	before Valentine's and that maybe it added extra
22	manager of Marlo Spaeth about why or when they would	22	shifts for coverage.
23	choose a designation or how they would choose a	23	Q And you might have done that, it sounds like, then?
24	designation for Marlo's time when she left early?	24	A No.
25	A No.	25	Q Would that be correct?
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1	Q And when you used this document in your meeting with	1	A No.
2	Marlo on March 18, 2015, did you look through the	2	Q The computer generated --
3	history of it?	3	A Yeah. Other than for the Black Friday event or a
4	A No. I would only have focused on the last part of	4	specific event, we didn't adjust.
5	it.	5	Q But isn't the day before Valentine's Day a specific
6	Q Why did you print out a report that went all the way	6	event?
7	back to 2006?	7	A No. It is just a holiday. It was not a specific
8	A Because I just printed the whole thing.	8	shopping event.
9	Q Sounds like you didn't put any time frame on the	9	Q Okay. So you don't think it means that on
10	attendance report when you printed it out. Is that	10	February 13, 2015, there was low customer traffic and
11	right?	11	so it was okay for Marlo to leave at 4; is that
12	A Right. I just printed the entire thing.	12	right?
13	Q And it give you the last nine-plus years, it looks	13	A I don't know. I'm guessing that maybe it just added
14	like.	14	extra shifts in.
15	So if Marlo started in 1999, do you know	15	Q It was the opposite?
16	whether there was any computerized attendance	16	A Yeah.
17	tracking of her work before July 11, 2006?	17	Q They expected more customer traffic, so they put
18	A I would not know that.	18	Marlo in for an extra shift basically; is that right?
19	Q Have you ever pulled your own attendance tracking	19	A Yes.
20	maintenance report?	20	Q Do you know whether Marlo was in the system as
21	A I don't clock in and out, so I don't have one.	21	somebody who could be pulled in to secondary for any
22	Q I would like to direct your attention to the	22	other department?
23	February 13, 2015 entry on this report. I think it	23	A I don't know that she was secondary. There were only
24	is actually the last entry on the report. Do you see	24	a few that were, and that was usually to help cover
25	where I'm pointing?	25	mainly the service areas, like the paint desk or the

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1	A	No. If she would have changed her availability to 12 to 3, she would not have been scheduled anything, because the system had the shift in there for 1 to 5:30.	1	about an employee who had a disability or claimed a disability or a question about the ADA or a question about reasonable accommodations or needed information on those things, how would you go about getting that information?
5		So someone else that would have been available from 1 to 5:30 would have been eligible for that shift. Marlo wouldn't have gotten a shift at all.	6	We can look them up on The Wire. All the associates can look them up.
9	Q	There is no way that Marlo would have been scheduled by the computer if she had an availability less than 1 to 5:30; is that right?	8	Q And what's The Wire?
12	A	Right.	9	A The Wire is Wal-Mart's web page, if you want to say, like where they have all their information. All the policies and things that are going on, their monthly calendars of events, and all the information is on The Wire.
13	Q	If you had been directed to modify Marlo's schedule as a reasonable accommodation that had been approved by headquarters, and the modified schedule was this hypothetical noon-to-3 time frame, would you have found other associates in the store that would have worked after 3 in Marlo's department?	14	Q Is it like an internal email -- Not "email." Internet system?
19	A	Yes.	15	A Yes.
20		MS. VANCE: I have no further questions for this witness at this time. I tender the witness, as Emery says.	17	Q So you testified earlier that in response to Marlo Spaeth's saying that she would get sick if she didn't eat at a certain time -- Do you recall testifying about that?
23		MR. BULIOX: I have got to use that sometime.	21	A Yes.
25		All right. I just have a few questions.	22	Q Okay. And in response to that, did you propose any other option for Marlo?
			24	A She could take a break at any time to eat when she felt it was necessary.
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1		MS. VANCE: Do you want to take a break and organize?	1	Q Could she have taken her break at 4 o'clock p.m.?
3		MR. BULIOX: Yeah.	2	A Yes.
4		MS. VANCE: Let's go off the record.	3	Q 4:30 p.m.?
5		(A break was taken from 3:54 to 4:03.)	4	A Yes.
6		EXAMINATION	5	Q 5:00 p.m.?
7	BY MR. BULIOX:		6	A Yes.
8	Q	Ms. Stern, I just have a few follow-up questions for you, the first question of which is: You testified earlier about policies and practices with respect to accommodations, correct?	7	Q 5:30 p.m.?
12	A	Yes.	8	A 5:30 would have been the end of her shift, but
13	Q	Okay. Do you know whether or not Wal-Mart has policies in effect regarding the Americans with Disability Act and accommodations for disabilities?	9	15 minutes prior, yes.
16	A	Yes.	10	Q 5:15. Okay.
17	Q	Okay. And when I say Americans with Disability Act, I'm going to refer to that as ADA. Is that fair?	11	And from your experience, was Marlo Spaeth able to adapt to change?
19	A	That's fair.	12	A Yes.
20	Q	All right. And were those policies in effect during 2015?	14	Q Okay. Do you have any examples of that?
22	A	Yes.	15	A When I first started supervising her, she basically would just fold towels. I took her through the housewares department and showed her how to zone, which is straightening everything on the shelves, and putting away returns from the service desk.
23	Q	Okay. And do you have access to those policies?	20	Q And was she able to do that?
24	A	Yes.	21	A She was able to do that. She started doing it on a daily basis.
25	Q	And if you had a question about, you know, an issue	23	Q If you could pull up Exhibit No. 30. These are your interview notes from the EEOC interview that you did, that you testified to earlier, correct?